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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SIXTH APPELLATE DISTRICT

J.O.,

Petitioner,

v.

THE SUPERIOR COURT OF SANTA
CRUZ COUNTY,

Respondent,

SANTA CRUZ COUNTY HUMAN
SERVICES DEPARTMENT,

Real Party in Interest.

H043392

(Santa Cruz County
Super. Ct. Nos. DP002900,
DP002901)

I. INTRODUCTION

J.O., the mother of the two children at issue in this juvenile dependency matter, has filed a petition for extraordinary writ challenging the juvenile court's orders terminating reunification services and setting the matter for a Welfare and Institutions Code section 366.26¹ permanency planning hearing.

¹ All further statutory references are to the Welfare and Institutions Code unless otherwise indicated.

The mother contends the juvenile court should have granted her “more time to show” that she “can maintain and sustain” sobriety and provide for her children. For the reasons stated below, we will deny the mother’s writ petition.

II. FACTUAL AND PROCEDURAL BACKGROUND

A. Section 300 Petitions

On April 14, 2014, the Santa Cruz County Human Services Department (the Department) filed petitions under section 300, subdivisions (b) [failure to protect] and (g) [no provision for support], alleging that 22-month old N.C. and 9-month old I.C. came within the jurisdiction of the juvenile court. The petitions alleged that the father, J.C., was in jail.

The petitions alleged that the mother’s substance abuse had been impacting her ability to care for the children. The mother had been arrested on April 1, 2014, for child endangerment and driving under the influence. The children had been in the car. The mother had consumed beer and whiskey before driving with the children, and her car had “skidded across the road, spun around, and then was facing the wrong way on the road.”

The petitions alleged that the father had failed to protect the children from the mother’s conduct. Additionally, the children were at risk of harm due to the father’s violent criminal history and substance abuse. Between 2010 and 2012, the father had been arrested for crimes including obstructing or resisting a public officer, possession of a controlled substance, disorderly conduct, being under the influence of a drug, cruelty to animals, burglary, and carrying a concealed dirk or dagger. On January 29, 2014, the father had been arrested on charges of first degree murder and gang-related activity. Furthermore, because the father was in jail, he was unable to care for the children or provide for their support.

B. Jurisdiction/Disposition Report and Hearing

The Department filed a jurisdiction/disposition report on May 15, 2014, recommending that the juvenile court declare the children dependents and that the mother receive family maintenance services.

The report noted that there had been three prior allegations of general neglect by the mother. In June of 2012, there was a report that the mother and N.C. had tested positive for marijuana when N.C. was born. The report also alleged that the mother and the father had a “highly volatile” relationship and that the mother was not focusing on N.C.’s needs. In 2011, there were two reports of general neglect by the mother during her pregnancy with N.C. The mother had admitted using alcohol and marijuana regularly, was not receiving prenatal care, and had a sexually transmitted infection.

The report contained further details of the mother’s arrest on April 1, 2014. N.C. had not been properly fastened in her car seat. The mother did not have a valid driver’s license. The mother had been argumentative and uncooperative with the officers. The mother claimed to have driven after drinking alcohol on prior occasions. The mother admitted to smoking marijuana and asserted that she was a gang member. The mother used profanities and racial slurs, and she kicked the officers. The children had been placed with the maternal grandmother and the maternal aunt while the mother was taken to jail. The children were currently residing with the mother, who was no longer in jail.

During subsequent interviews with a social worker, the mother acknowledged that she needed to stop drinking. Upon her release from jail, the mother was required to wear a Transdermal Alcohol Monitoring Device (TAD). The mother had a medical marijuana card. The mother was scheduled to begin outpatient treatment at ALTO as well as group and individual counseling.

The mother’s recommended case plan included staying sober, participating in counseling, participating in parenting classes, finding safe housing, drug and alcohol testing, completing a drug and alcohol assessment, and participating in any recommended

drug and alcohol services. With respect to housing, the case plan required the mother to not live with the maternal grandmother.

On June 26, 2014, the parents submitted on the Department's report and the parties stipulated to an amendment to the petitions. The juvenile court sustained the petitions and adopted the Department's recommendations, declaring the children dependents and ordering family maintenance services for the mother.

C. Six-Month Review of Family Maintenance Services

The Department filed a six-month review report on December 18, 2014, recommending the mother continue to receive family maintenance services. The children continued to reside with the mother.

The mother had participated in counseling, was dropped after missing two sessions, and had then re-engaged in counseling. She had not started a parenting class. She was still living with the maternal grandmother but was looking for her own housing. The mother had not followed through with her referral to outpatient treatment at ALTO, but she claimed she was no longer drinking alcohol. The mother had not done any drug testing. There had been no new incidents of child abuse or neglect.

At the six-month review hearing held on December 18, 2014, the parents submitted on the Department's report, and the juvenile court adopted the Department's recommendations, ordering continued family maintenance services for the mother.

D. Section 387 Petitions

On February 26, 2015, the Department filed section 387 petitions and ex parte applications for orders, recommending the children be detained.

The petitions alleged that on February 21, 2015, the children were found home alone; the mother was on another floor of the building. The home was in disarray: there was broken glass, blood on the floor and furniture, open cans of beer on the floor, and vodka and marijuana within the children's reach. The mother indicated that there had been a fight among "several males" in the home, and she was arrested for cruelty to a

child. The home had previously been found in disarray a few weeks earlier, and the mother had agreed to keep the home safe at that time. The mother had not been regularly attending substance abuse treatment nor had she been regularly drug testing.

On February 27, 2015, the juvenile court ordered the children temporarily detained pending a contested detention hearing, and on March 2, 2015, the juvenile court ordered the children detained.

The Department filed a report on March 24, 2015 in which it recommended the children remain in an out-of-home placement and that the parents receive reunification services.

After a settlement conference on April 14, 2015, the mother submitted the matter on the Department's report. The father submitted on the Department's report two days later. The juvenile court sustained the section 387 petition and adopted the Department's recommendations, ordering family reunification services, including supervised visitation for the mother.

At a settlement conference hearing on June 3, 2015, the parties advised the juvenile court that the children had been placed with the paternal great aunt.

E. Six-Month Review of Reunification Services

The Department filed a status review report on September 8, 2015, recommending the parents continue to receive reunification services.

The mother had a pending trial for battery and also had been arrested for obstructing a peace officer and providing false identification to a peace officer. The father remained in custody on attempted murder charges with a gang allegation. The children were now two and three years old, and they remained with the paternal great aunt.

The mother had completed an intake at ALTO and had completed seven "process groups." Her drug tests had been negative. She had been visiting with the children regularly.

At a hearing on September 8, 2015, the parents submitted on the Department's report, and the juvenile court ordered reunification services to continue. The mother's updated case plan included anger management classes.

F. Section 388 Petitions

On September 30, 2015, the Department filed section 388 petitions, requesting the juvenile court suspend the mother's visitation because she was in custody on charges of dissuading a victim or witness. On October 6, 2015, the juvenile court denied the Department's request, noting that the mother had been released on her own recognizance that day.

On October 13, 2015, the maternal grandmother filed section 388 petitions, requesting visitation with the children. On November 12, 2015, the juvenile court granted the request, ordering monthly supervised visitation for the maternal grandmother.

On February 2, 2016, the Department filed additional section 388 petitions, asking the juvenile court to terminate reunification services as to the father, who had been sentenced to an eight-year prison term. The juvenile court set a hearing on the matter to coincide with the 12-month review hearing.

G. 12-Month Review of Reunification Services

The Department filed a status review report on March 1, 2016, in which it recommended the juvenile court terminate reunification services as to both parents and set a section 366.26 selection and implementation hearing.

The children remained in their placement with the paternal great aunt, which was a concurrent home. The mother was scheduled to be sentenced for three criminal matters on March 15, 2016.

The mother had attended counseling regularly in November and December of 2015, but she had missed counseling sessions in January and February of 2016. The mother had not graduated from her parenting class but had graduated from her outpatient program. The mother had indicated it would be difficult for her to attend 12-step

meetings. The mother had missed a number of drug tests. She had attended anger management classes. She had visited with the children regularly. After 12 months of reunification services, the social worker did not think the mother was “in a position to reunify with [her] children.”

At the March 1, 2016 hearing, the juvenile court set the matter for a contested hearing on March 25, 2016.

In a memo to the court filed on March 15, 2016, the Department reported that the mother had cancelled three visits with the children and failed to show for another visit. She had missed some drug tests and tested positive for alcohol twice. She had provided proof of attendance at several 12-step meetings. She had graduated from anger management but had not attended all of her counseling sessions.

H. Contested Hearing

A contested 12-month review hearing was held on March 25, 2016. The Department submitted the matter on its reports and the attachments to its section 388 petitions.

The mother testified at the hearing. She described her participation in counseling and her work towards the goals of maintaining sobriety, understanding the impact of drug use on the children, developing a relapse prevention plan, obtaining suitable housing for the children, and meeting her children’s educational and developmental needs. She talked about the skills she had learned in parenting classes and how she used those skills during her visits with the children. She discussed her completion of an anger management course and what she had learned. She had completed an outpatient treatment program and had attended meetings. She had just begun attending meetings on a daily basis. She explained that her missed drug tests were due to her work schedule. Regarding her positive test for alcohol in February of 2016, the mother admitted she had made a mistake and asserted that she had been “testing clean” since then. The mother also admitted she had missed visits with the children around the same time.

The mother indicated she wanted the juvenile court to extend her reunification services. She would work on getting housing, getting a car, going to meetings, and not drinking or smoking marijuana. The mother's attorney asked the juvenile court to find that the mother had made significant progress in resolving the issues that brought her children before the court and to find that there was a substantial probability the children would be returned to her care by the time of the 18-month hearing.

The juvenile court found that returning the children to the mother's physical custody would create a substantial risk of detriment to their safety, protection, or physical or emotional well-being. The juvenile court cited the mother's two positive alcohol tests in February, 11 missed drug tests, and missed visits with the children. The juvenile court also found no substantial probability of return if reunification services were extended to 18 months. The juvenile court set a section 366.26 selection and implementation hearing for June 28, 2016.

I. Writ Proceedings

On March 29, 2016, the mother filed notice of her intent to file a writ petition. On April 22, 2016, the mother filed a petition for extraordinary writ.

III. DISCUSSION

A. Adequacy of the Writ Petition

The Department contends we should dismiss this matter due to the mother's failure to "comply with the procedural requirements" of a writ petition. The Department asserts that the mother's petition "does not provide the appellate court with an adequate citation to record, argument, and points and authorities" and "leaves blank the portions where the form petition elicits grounds for the petition and asserted errors."

A writ petition seeking review of a juvenile court's order setting a hearing under section 366.26 must include a summary of the grounds of the petition. (Cal. Rules of

Court, Rule 8.452(a)(1)(D).)² The petition “must be accompanied by a memorandum.” (Rule 8.452(a)(2).) “The memorandum must provide a summary of the significant facts, limited to matters in the record.” (Rule 8.452(b)(1).) “The memorandum must state each point under a separate heading or subheading summarizing the point and support each point by argument and citation of authority.” (Rule 8.452(b)(2).) “The memorandum must support any reference to a matter in the record by a citation to the record. The memorandum should explain the significance of any cited portion of the record and note any disputed aspects of the record.” (Rule 8.452(b)(3).) Where a writ petition is procedurally deficient, a reviewing court may summarily deny it. (See *Anthony D. v. Superior Court* (1998) 63 Cal.App.4th 149, 157.) However, a writ petition “must be liberally construed” by the appellate court. (Rule 8.452(a)(1).)

In her petition for an extraordinary writ, which was filed on a Judicial Council form, the mother indicates she is challenging the juvenile court’s orders terminating her reunification services and setting a hearing under section 366.26. Although she left the form blank where it asks why the challenged order was erroneous, the mother did include information under “Summary of factual basis for petition.” Specifically, the mother contends the juvenile court should have granted her “more time to show” that she “can maintain and sustain” sobriety and provide for her children. In a letter addressed to this court and attached to the petition, the mother includes additional information and asserts, “I am working towards being a better mother and I will protect my children from any future [s]ituations. . . . [¶] I am still working on my recovery and strengthening my recovery plan, I am planning to do [e]verything to show I am a parent who loves her children.”

Construed liberally, the writ petition is not so procedurally deficient as to require us to summarily deny it. We construe the letter attached to the writ petition as the

² All further rule references are to the California Rules of Court.

required memorandum, and the mother's argument is easily discernible: she challenges the juvenile court's denial of her request to extend reunification services for another six months.

B. Legal Principles

After a child is removed from a parent's custody, the juvenile court generally must order reunification services for the child and the parents. (§ 361.5, subd. (a).) When the child is under three years of age at the time of removal, reunification services are presumptively limited to six months and "no longer than 12 months." (*Id.*, subd. (a)(1)(B).) Reunification services may be extended up to 18 months from the date of removal if the juvenile court finds a substantial probability that the child will be returned to the physical custody of his or her parent or guardian within that extended time period or that reasonable services have not been provided to the parent or guardian. (*Id.*, subd. (a)(3); see also § 366.21, subd. (g)(1).) "[I]n order to find a substantial probability that the child will be returned to the physical custody of his or her parent or legal guardian and safely maintained in the home within the extended period of time," the court must find that "the parent or legal guardian has consistently and regularly contacted and visited with the child," that "the parent or legal guardian has made significant progress in resolving problems that led to the child's removal from the home," and that "the parent or legal guardian has demonstrated the capacity and ability both to complete the objectives of his or her treatment plan and to provide for the child's safety, protection, physical and emotional well-being, and special needs." (§ 366.21, subd. (g)(1)(A)-(C).)

"We review an order terminating reunification services to determine if it is supported by substantial evidence. [Citation.] In making this determination, we review the record in the light most favorable to the court's determinations and draw all reasonable inferences from the evidence to support the findings and orders. [Citation.] 'We do not reweigh the evidence or exercise independent judgment, but merely

determine if there are sufficient facts to support the findings of the trial court.’
[Citation.]” (*Kevin R. v. Superior Court* (2010) 191 Cal.App.4th 676, 688-689.)

C. Analysis

Having reviewed the entire record on appeal, we determine that substantial evidence supports the juvenile court’s findings and orders. The evidence shows that the mother received reunification services for 12 months after the children were found unsupervised in her home, where alcohol and drugs were within their reach and broken glass was on the floor. Prior to that incident, the mother had been arrested for driving while intoxicated with the children in her car. The mother’s service objectives included obtaining and maintaining a stable and suitable residence for herself and her children and staying sober. She was required to participate in counseling, parenting classes, anger management classes, and drug treatment, and to regularly test for drugs and alcohol.

Although the mother had participated in an outpatient program to address her substance abuse, the mother used alcohol and drugs at various times during the proceedings. The mother had some clean tests, but at the time of the 12-month review hearing, she had two recent positive tests for alcohol and a number of missed tests. Further, she did not have stable or suitable housing for herself and the children. These facts supported a finding that the mother had not “made significant progress in resolving problems that led to the child[ren]’s removal from the home.” (§ 366.21, subd. (g)(1)(B).) In addition, her visitation with the children was inconsistent. (*Id.*, subd. (g)(1)(A).) The mother had not attended all of her counseling sessions. Particularly after considering the mother’s recent relapse, the juvenile court could reasonably determine that she had not “demonstrated the capacity and ability both to complete the objectives of . . . her treatment plan and to provide for the child[ren]’s safety, protection, physical and emotional well-being, and special needs.” (*Id.*, subd. (g)(1)(C).)

We conclude substantial evidence supports the juvenile court's finding that there was not a substantial probability that the children would be returned to the mother's physical custody within an extended 18-month time period. (See §§ 361, subd. (a)(3), 366.21, subd. (g)(1).) Therefore, we will deny the mother's writ petition.

IV. DISPOSITION

The petition for extraordinary writ is denied.

BAMATTRE-MANOUKIAN, J.

WE CONCUR:

ELIA, ACTING P.J.

MIHARA, J.